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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140903748-4748-01]

RIN 0648-BE45

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Gulf of Maine Haddock Annual Catch Limit Revision

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: This action implements new stock status determination criteria for Gulf of Maine (GOM) haddock and increases the associated GOM haddock catch limits for the remainder of fishing year 2014 based on the most recent and best available scientific information. This action is intended to provide additional commercial fishing opportunities for GOM haddock and other healthy groundfish stocks.

DATES: Effective November 12, 2014, through May 11, 2015. Comments must be received by December 12, 2014.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0133, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0133, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Gulf of Maine Haddock Emergency Action.”

Instructions: Supporting analysis documents may be obtained at www.regulations.gov.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, phone: 978-281-9182.

SUPPLEMENTARY INFORMATION:

The Secretary of Commerce (Secretary) finds that emergency action, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), is necessary to revise the fishing year 2014 catch limits for Gulf of Maine (GOM) haddock, managed by the Northeast Multispecies Fishery Management Plan (referred to as the groundfish plan). A recent benchmark stock assessment conducted by the Stock Assessment Review Committee (SARC 59, August 2014) indicated that the GOM haddock stock status is no longer overfished and overfishing is not occurring. This emergency action increases the GOM haddock annual catch limit for the remainder of fishing year 2014 based on this updated stock assessment. This action seeks to prevent foregone economic yield or

adverse community impacts and preserves an economic opportunity that otherwise would not be available.

Background

The New England Fishery Management Council Requests Assistance

On May 3, 2013, the final rule implementing Framework Adjustment (Framework) 50 to the groundfish plan (78 FR 26172) implemented an overfishing limit of 440 mt for GOM haddock, with an allowable biological catch of 341 mt and an annual catch limit of 323 mt for fishing year 2014 (Table 1). These catch limits represented substantial reductions of catch levels from prior years and were implemented when the stock was considered to be approaching an overfished condition and overfishing was occurring. The final rule implementing Framework Adjustment (Framework) 51 to the groundfish plan (79 FR 22421; April 22, 2014) retained these limits.

On July 9, 2014, the New England Fishery Management Council (Council) requested that the National Marine Fisheries Service (NMFS) increase the GOM haddock annual catch limit for fishing year 2014, pending the final results of SARC 59, while the Council developed GOM haddock specifications for the next fishing year. The Council requested our assistance, given the substantially longer time it would take to develop and implement new catch limits. We can develop and implement an emergency action more swiftly than a Council action because Council actions are subject to procedural and other requirements not applicable to the Secretary. A delay associated with a Council action could result in overly restrictive and economically harmful catch limits that otherwise may have been avoidable. Additional information on emergency and interim measures can be found in Section 305(c) of the Magnuson-Stevens Act, available online at

www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf.

SARC 59

The previous benchmark assessment for GOM haddock used a virtual population analysis model that incorporated commercial landings and discards, as well as recreational landings, but not recreational discards. For SARC 59, the assessment was conducted using a statistical catch-at-age model and the catch inputs included landings and discards from both the commercial and recreational fleets. Trawl gear is the primary mode of capture in the commercial fishery and, as such, commercial discards were assumed to suffer 100 percent mortality, consistent with the previous assessment. SARC 59 was the first time recreational discard-at-length data was available and incorporated into the model, and so the recreational discard mortality increased from zero percent to 50 percent discard mortality.

The SARC determined that the change in stock status from the 2012 update (not overfished but approaching an overfished condition and overfishing occurring) to the current status (not overfished and no overfishing) was due primarily to the addition of three more years of fishery and survey data, and to the very strong 2010 year class of GOM haddock. Additional information on SARC 59 can be found online at www.nefsc.noaa.gov/saw/reports.html.

Two models were presented at SARC 59: 1) A “final model” which utilized an age-structured approach; and 2) a “sensitivity analysis” that was completed for the purposes of incorporating a more conservative population estimate of the 2012 GOM haddock year class because of uncertainty of its size. The Council’s Groundfish Plan Development Team highlighted their concern regarding the uncertainty with the 2012 year class and recommended that the Council’s Scientific and Statistical Committee (SSC) establish fishing year 2015 catch limits derived from the sensitivity analysis. Despite this concern, the SSC accepted the final model and recommended the corresponding quotas from this approach for fishing year 2015. Importantly, one of the SSC’s justifications for selecting the final model was that another operational assessment is scheduled in 2015 that will provide updated information on the size of the 2012 year class. At the September 30-October 2, 2014 Council meeting, the Council supported

inclusion of GOM haddock specifications derived from the final model in Framework Adjustment 53, which is scheduled for implementation on May 1, 2015 (the beginning of fishing year 2015).

Emergency Action

Increasing GOM Haddock Catch Limits

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary to promulgate emergency regulations to address fishery emergencies. The emergency criteria in the policy guidelines (62 FR 44421; August 21, 1997) define the existence of an emergency as a situation that:

- Results from recent, unforeseen events or recently discovered circumstances; and
- Presents serious conservation or management problems in the fishery; and
- Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The justifications described in the guidelines include the prevention of “significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone,” and the prevention of significant community impacts (62 FR 44422).

The SARC 59 provides recent unforeseen or discovered circumstances showing that the GOM haddock stock is in better condition than previously determined. Not taking emergency action to align GOM haddock specifications with the actual stock condition could result in lost revenue and harm to communities as fishermen would likely have to modify or cease their fishing operations. For example, as of October 21, 2014, approximately 55 percent of the fishing year 2014 commercial GOM haddock fishery catch limit has been caught. If catches continue at this rate, the commercial fishery may reach its GOM haddock catch limit prior to the end of the fishing year, or may be forced to substantially modify fishing operations to avoid reaching its quota. Increasing the annual catch limit to more accurately reflect the improved stock condition will avoid potentially constraining catch limits and help fishermen

achieve optimum yield of both GOM haddock and potentially other groundfish stocks for this fishing year. Immediate action to increase fishing opportunities may also prevent or mitigate economic loss or adverse community impacts from interim GOM cod protections.

Emergency action to swiftly increase the GOM haddock annual catch limit is warranted. Using the normal Council regulatory process to complete this action prior to the end of the 2014 fishing year would be extremely difficult, if not impossible. Even if it were possible to complete it before the end of the fishing year, the time required for the Council process would result in a rule issued so late in the season that it would have little, if any, benefit to the affected entities or communities. The public had a preliminary opportunity to comment on the results from SARC 59 and a potential Secretarial action to increase the GOM haddock annual catch limit in fishing year 2014, before the Council voted to recommend this action. The Council is using its normal process to consider similar or higher catch limits in Framework 53 for fishing year 2015. The public will have further opportunity to comment on issues relating to the potential continuation or increases of these limits in Framework 53. These opportunities to comment, combined with the need for immediate emergency action to provide economic opportunities and prevent losses outweigh the value of advance notice, public comment, and deliberation provided by the normal regulatory process.

The duration of this emergency action is limited by the Magnuson-Stevens Act to an initial period of 180 days, with a potential extension of an additional 186 days. We anticipate that the Council will submit revised catch limits for GOM haddock in time for us to approve a catch limit increase in Framework 53 for fishing year 2015, which begins on May 1, 2014. However, if the anticipated Council action to specify catch levels for fishing year 2015 is delayed, the annual GOM haddock catch limit implemented through this emergency action will be extended for an additional period up to 186 days until Framework 53 is approved, if necessary.

Tables 1 and 2 compare the initial and revised status determination criteria and associated catch levels for GOM haddock for fishing year 2014. The overfishing limit incorporated in this emergency action is based on the “final model” from SARC 59, which represents the biological reference points that result from the most recent assessment. The allowable biological catch and corresponding catch limits in this action are derived from the sensitivity model from SARC 59. Using this model is more conservative than the amount of catch that would be derived from the allowable biological catch control rule implemented in Amendment 16, which calculates allowable biological catch as the projected catch associated with 75 percent of Fmsy. We have elected to increase GOM haddock catch limits in fishing year 2014 based on the sensitivity analysis (which was described above under *SARC 59*) because we consider a cautionary approach to increasing the quotas to be more appropriate for an emergency action. However, this cautious approach still supplies a large GOM haddock quota increase (almost 100 percent) for the fishing industry while limiting the risk of overfishing, given the Plan Development Team’s concern pertaining to the size of the 2012 year class for this stock. Tables 3 and 4 provide the increased sector specific allocations and common pool trimester quotas derived from this action. The sector specific allocations are preliminary estimates; final sector allocations will be provided to sector managers shortly after publication. Any Trimester 1 quota that is unused by the common pool is carried over into Trimester 2, and unused Trimester 2 quota is carried over to Trimester 3. We have elected not to modify the common pool trip limit (25 lb per trip) at this time, but will review common pool catch and make any appropriate changes prior to Trimester 3.

Table 1. Initial and Revised GOM Haddock Status Determination Criteria and Potential Catch Levels for Fishing Year 2014

Catch Level	Initial Fishing Year 2014 Levels (mt)	Revised Fishing Year 2014 Levels (mt)
Overfishing Limit of Catch	440	1085
Acceptable Biological Catch	341	677
Total Annual Catch Limit (ACL)	323	641
Groundfish sub-ACL	307	610
Sector sub-ACL	218	432
Common Pool sub-ACL	2	4
Recreational sub-ACL	87	173
State Waters ACL subcomponent	5	10
Other ACL subcomponent	7	15
Mid-Water Trawl sub-ACL	3	6

Table 2. Status Determination Criteria and Numerical Estimates for GOM haddock

Parameter	2012 Update Operational Assessment	August 2014 SARC 59
Model	Virtual Population Analysis (VPA)	Age Structured Assessment Program (ASAP)
Status Determination Criteria: B _{msy} (biomass associated with maximum sustainable yield)	SSB _{msy} = 4,904 MSY = 1,117	SSB _{msy} = 4,108 MSY = 955
Status Determination Criteria: F _{msy} (fishing mortality associated with maximum sustainable yield)	F _{msy} proxy = 0.46	F _{msy} proxy = 0.46
Fishing Mortality	F ₂₀₁₀ = 0.82	F ₂₀₁₃ = 0.39
Biomass	B ₂₀₁₀ = 2,868 mt	B ₂₀₁₃ = 4,153 mt

Table 3. Initial and Preliminary Revised GOM Haddock Annual Catch Entitlement by Sector for Fishing Year 2014 (lb)

Sector Name	Initial Fishing Year 2014 Allocation	Revised Fishing Year 2014 Allocation
Fixed Gear Sector	8,922.32	17,682.41
Maine Coast Community Sector	12,375.78	24,526.55
Maine Permit Bank	5,431.97	10,765.18
NEFS 1	12.03	23.85
NEFS 2	79,343.13	157,243.67
NEFS 3	45,030.20	89,241.68
NEFS 4	40,511.81	80,287.05
NEFS 5	1,406.55	2,787.53
NEFS 6	18,660.52	36,981.77
NEFS 7	2,275.42	4,509.48
NEFS 8	974.47	1,931.22
NEFS 9	23,256.90	46,090.95
NEFS 10	12,284.38	24,345.41
NEFS 11	15,567.10	30,851.16
NEFS 13	4,793.20	9,499.25
NCCS	1,744.68	3,457.64
New Hampshire Permit Bank	150.95	299.15
Sustainable Harvest Sector 1	207,161.20	410,555.83
Sustainable Harvest Sector 3	316.08	626.41
Sector Total	480,218.71	951,706.18

NEFS = Northeast Fishery Sector, NCCS = Northeast Coastal Communities Sector

Table 4. Initial and Revised GOM Haddock Common Pool Trimester TACs for Fishing Year 2014 (mt)

Trimester	Trimester Allocations	Initial Fishing Year 2014 Allocation	Revised Allocation
Trimester 1	27%	.51	1.17
Trimester 2	26%	.49	1.12
Trimester 3	47%	.88	2.03

An environmental assessment that analyzes the impact of the revised GOM haddock catch limits for the remainder of fishing year 2014 and compares the impact to the current catch limits specified for fishing year 2014 was prepared and is available for review at www.regulations.gov. The revision to the status determination criteria and annual catch limit align current management measures with the best available scientific information. The revised level of GOM haddock catch for fishing year 2014 is consistent with sustaining the biomass over the long-term at the level associated with maximum sustainable yield and fishing at a sustainable level of mortality. Both scientific and management uncertainty are accounted for in this catch level, so the risks of negative biological impacts on GOM haddock have been minimized. A larger catch limit for GOM haddock may result in greater fishing effort and catch of other groundfish and non-groundfish stocks in addition to GOM haddock, as compared to the status quo, because GOM haddock is less likely to serve as a constraining or “choke stock.” While this increase would reduce the constraint from GOM haddock, there are several other stocks that may constrain the fishery even more than GOM haddock, particularly GOM cod (see next section, *GOM Cod Interim Action*). While there could be an effort increase for GOM haddock as a result, a substantial increase is unlikely. Compared to the status quo, the impact of the emergency action on protected resources and essential fish habitat would likely be negligible.

The increased GOM haddock catch limits under this emergency action would represent an increase in operational flexibility and likely a small increase in revenue. After the substantial reduction in groundfish catch limits from previous years, combined with further restrictions that will prevent vessels from targeting GOM cod this year, this operational flexibility and potential increase in revenue is important. Further, the economic analyses may undervalue the revenue increase that could happen because GOM haddock are more prevalent than in the years during which the data were gathered to incorporate into the model. While Framework 51 did not assume that GOM haddock would be a

constraining stock, as of October 21, 2014, more of the GOM haddock quota has been caught than any other allocated stock. Without an emergency action raising this year's catch limits, it is likely that the limits will be reached and many fishermen will lose the ability to fish for other stocks within the GOM haddock stock area (sector vessels are required to stop fishing in a specific stock area when they no longer have quota for a given species). Increasing the quota for this stock will provide an opportunity for operational flexibility that may provide additional catch and revenue from not only GOM haddock, but other healthy stocks that are caught in the GOM, such as pollock and Acadian redfish. This is especially important given the substantial restrictions on opportunities to fish for GOM cod.

Gulf of Maine Cod Interim Action

An August 2014 stock assessment update on GOM cod (available online at www.greateratlantic.fisheries.noaa.gov/mediacenter/ongoing/gomcod/index.html) indicated that the overall stock health continues to decline and that the stock is in very poor condition. The Council has requested that we implement interim management measures to protect GOM cod and help the stock rebuild. Because GOM cod and haddock comeingle, we are concerned with how increased fishing effort on GOM haddock from this action could potentially increase catch of GOM cod. To address these concerns, we are concurrently implementing interim measures for GOM cod that include mortality and spawning area closures, and other effort restrictions, to further protect GOM cod. These GOM cod management measures will reduce the impact that increased the GOM haddock catch limits could have on GOM cod.

On the other hand, efforts to reduce GOM cod catch could also limit the ability for fishermen to harvest GOM haddock. Still, we believe that fishermen should be provided with the opportunity to target healthy groundfish stocks, such as GOM haddock, pollock, and redfish, if they are able to successfully target these stocks while avoiding GOM cod. It is critical for fishermen to have operational

flexibility that could mitigate economic loss and adverse community impacts that could result from the GOM cod interim measures.

The Recreational Groundfish Fishery

While this action increases both the commercial and recreational GOM haddock catch limits, it does not modify current recreational management measures as requested by the Council in their July 9, 2014 letter to us. Recreational catch models suggest that the fishery has likely already exceeded the 173 mt allocation specified for recreational vessels in this emergency action. Because of this, and the increased concerns for GOM cod bycatch when recreational fishermen target GOM haddock, we are not liberalizing recreational management measures in this action.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds it impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment under the provisions of section 553(b)(B) of the Administrative Procedure Act. As explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest. Implementation delays would result in negative consequences inconsistent with the Magnuson-Stevens Act and groundfish plan mandates. The immediate benefit of an emergency action outweighs the value that would be derived from the normal regulatory process. This action was initiated as a result of a new benchmark stock assessment that revised the stock status for GOM haddock (SARC 59). As a result of the new assessment, the SSC recommended, and the Council voted in support of, higher fishing year 2015 specifications for GOM haddock. Although the Council could have initiated a management action to modify the GOM haddock catch limits for the remainder of fishing year 2014,

such an action was unlikely to have been completed before the end of fishing year 2014, potentially resulting in status quo restrictive catch limits that otherwise could have been avoided. The regulations require that when the catch limit of a single allocated groundfish stock, such as GOM haddock, is projected to be achieved, a reduction or cessation of fishing effort is required. As a result, catches of healthy groundfish stocks that are caught concurrently with GOM haddock could also be reduced. Thus, the time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action could severely curtail fishing operations if the current catch limits are reached prior to implementation of the increased catch limits.

An emergency action can be developed and implemented by NMFS much more swiftly than a Council action which is subject to procedural and other requirements not applicable to the Secretary. Thus, we initiated this temporary rule at the request of the Council, to revise the GOM haddock catch limits as soon as possible in fishing year 2014. This action will benefit fishermen and fishing communities by increasing revenues associated with larger GOM haddock catches, as well as other healthy groundfish stocks such as pollock and Acadian redfish, that would likely have been foregone due to the lower catch limit of GOM haddock.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act. As stated above, this action would benefit the affected fishermen and fishing communities by increasing revenues due to larger GOM haddock catch limits, and provide more opportunity for commercial groundfish vessels to harvest their allocations of other stocks caught concurrently. This rule relieves a restriction by increasing the catch limit for GOM haddock and, consequently, extends fishing opportunity for fishermen that would otherwise be constrained under the current catch limits, which are based on outdated biological information and therefore, needlessly restrictive. If implementation of this

rulemaking were delayed to allow for a 30-day delay in effectiveness, the fishery would likely forego some amount of the increase in catch level and the resulting additional fishing opportunity and could suffer an early end to the fishing season. Without immediate effectiveness of this action, if the common pool is projected to catch its current catch limit, an in-season action would be needed to implement a more restrictive trip limit to ensure the common pool did not exceed its current catch limit. Similarly, sector vessels would still be required to end fishing effort in the GOM if they reached their allocations under the current GOM haddock catch limit. While these restrictions would be alleviated after this rule becomes effective, the lost economic opportunity of foregone catches that would result from a delay in the effectiveness of this action may not be recouped in the time remaining before the end of fishing year 2014. For these reasons, the AA finds good cause to implement this rule immediately.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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